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AUG 1 2 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 12, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 92-297

Dear Mr. Caton:

On behalf of Roseville Telephone Company, we are filing an original and five (5) copies of its Comments in response to the Commission's Fourth Notice of Proposed Rulemaking in the above-referenced proceeding.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

George Petrutsas
Counsel for Roseville Telephone Company

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Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
AUG 1 2 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Band, to Establish Rules and Polices for Local Multipoint Distribution Service and for Fixed Satellite Services	)))))))))	CC Docket No. 92-297

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("RTC"), by its attorneys, hereby submits its Comments in response to the Commission's Fourth Notice of Proposed Rulemaking, released July 22, 1996 (the "*Notice*") in the above-captioned proceeding. In these Comments, RTC addresses only the issues raised in the *Notice* regarding eligibility of local exchange carriers ("LECs") to bid on or obtain licenses in the Local Multipoint Distribution Service ("LMDS").

I. Exclusion of LECs, or Limitations on LEC Provision <u>of LMDS, is Not Necessary to Promote Local Competition.</u>

RTC is a LEC with approximately 100,000 access lines serving subscribers in Roseville, California, and has been providing high quality telecommunications services for over 80 years. RTC welcomes the new competitive environment, not just in the provision of local exchange services, but in the provision of all wireless and wireline voice, data and video services. This new environment is driven by regulation (*e.g.,* the Telecommunications Act of 1996), by rapid changes in markets, and by the growth of new technologies and the rapid integration of services formerly considered to be separate. LMDS may well become one of the new services that provides voice, data, and video services to subscribers in a cost-effective manner, and thus increases the competitive nature of those service environments.

Although the Commission's interest in ensuring that use of LMDS will promote competition is valid, its concern that LEC provision of LMDS may restrain competition is not warranted. While LMDS may become a useful service, it is hardly a "unique and necessary resource for de-concentrating the market power of incumbent LECs...." *Notice* at para. 126. At this point, it is much too early in the development of LMDS to ascertain precisely how it will be used by various providers. In any case, there are a multitude of existing services and technologies that already are and will increasingly be used to promote competition in the local exchange market:

- The most important of the new means for competing with LECs is through use of the incumbent LEC's network. Under newly enacted Section 251 of the Communications Act, and rules enacted in CC Docket No. 96-98, competitors of LECs ("CLECs") now have a federally mandated right to purchase network elements and to purchase local exchange service at wholesale rates, all to compete directly with the LEC. Congress, the Commission, and most industry analysts anticipate that CLEC use of rights under Section 251 will revolutionize competition in the local exchange market in the next few years, regardless of how various parties use technologies such as LMDS.

- Facility-based wireline companies also promise to provide substantial competition to incumbent LECs. Former "competitive access providers" such as MFS and Teleport Communications Group have already constructed extensive networks of their own in metropolitan areas across the country, and are ready to or already have obtained authority to provide local exchange services. MCI Metro has similarly constructed a substantial number of local networks for use in the provision of local exchange service. AT&T has sought authority to provide local service in all 50 states, and while it may initially resell LEC service or purchase network elements, its massive financial resources, and the obvious

> incentives of controlling its own network (if for no other reason than to avoid the payment of access charges), suggest that it too will ultimately construct its own local networks. Furthermore, major cable TV operators such as TCI and Continental Cablevision (with its strategic partner, US West) already have impressive local networks and promise to use those networks for the provision of local exchange service.
>
> - Lastly, other wireless technologies such as cellular, PCS, and SMR, are growing rapidly, and are in many cases currently competing with the LEC network in many parts of the country. Over 17 billion dollars has recently been bid in PCS auctions based on this premise. These wireless providers must be seen as important competitors in the local exchange market, regardless of the development of LMDS.[1]

In sum, while LMDS may turn out to be an important new technology, with the already impending explosion of competition in the local market through use of Section 251 rights, through rapid growth of existing wireless services, and through anticipated use of independent wireline facilities operated by the likes of AT&T, MCI, MFS, TCI and Continental Cablevision, among the multitude of others, it would be unreasonable for the Commission to conclude that preventing or limiting LEC use of LMDS is necessary for the development of competition in the local exchange market.

II. Limitations on LEC Use of LMDS Would Upset the Competitive Balance Crafted in the 1996 Telecommunications Act.

RTC fully agrees with the Commission's conclusion that the Communications Act (at least prior to the enactment of the Telecommunications Act of 1996), did not prohibit LECs from acquiring LMDS licenses. *Notice* at para. 108. The language and policies

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[1] While mobile use alone of wireless services must increasingly be seen as competition in the local exchange market, the Commission's recent action in its *CMRS Flexible Service Offering First Report and Order* (WT Docket 96-6, FCC 96-283, released August 1, 1996) of freeing up use of commercial mobile radio service spectrum for fixed services, such as local loops, increases the opportunity for CMRS providers to directly compete in the local exchange market.

of the 1996 Act is consistent with forbearance from such prohibitions.

The Telecommunications Act of 1996 creates "a pro-competitive, de-regulatory national policy framework" for the telecommunications industry.[2] New Sections 251 and 252 enacted thereunder impose obligations and responsibilities on incumbent LECs that substantially open the local telecommunications market to competition. Nevertheless, it is clear that Congress did not intended that incumbent LECs be driven out of business. Rather, Congress attempted to balance the opportunities for new entrants with preservation of the rights of incumbent LECs to fairly compete in local exchange services. For example, while Section 251 requires LECs to provide network elements and wholesale local exchange service to local competitors, Section 252 (d)(1)(B) guarantees that rates for interconnection and provision of network elements should include a reasonable profit. Similarly, Section 251(f) attempts to reduce any harmful impact of interconnection requirements on mid-size and rural LECs.

The relevant provisions of the 1996 Telecommunications Act clearly were designed to establish the predominate federal policy on local competition. It should be noted, however, that in crafting a balance between promoting local competition and preserving the rights of LECs to compete and succeed, Congress made no mention of imposing new limitations on LEC use of wireless technologies. The limitations on LEC use of LMDS considered in the *Notice*, however, although not required by law, could shift the competitive balance in the local market against LECs. Such an action by the Commission would be inconsistent with Congressional intent, and would be unwise, at

2 S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

least until the mechanisms established in the 1996 Act are given time to impact the local market.

III. LEC Provision of LMDS Will Promote Competition.

RTC concurs with the argument made by BellSouth earlier in this proceeding that given the combination of services that may be provided using LMDS, no class of potential provider should be excluded from eligibility. *Notice* at para. 112. As shown below, eligibility restrictions are more likely to stifle than to promote competition.

RTC anticipates that, if allowed to obtain LMDS licenses, it would use LMDS to provide voice and video services, perhaps on an integrated basis for certain subscribers. While such services would be used in part in RTC's wireline telephone service area, it should be noted that that area contains only a small percentage of the territory and population of the encompassing basic trading area for which LMDS will be licensed.[3] The need to maximize return from the sunk costs of acquiring the license for the entire BTA, the Commission's build-out requirements, and market incentives, will result in RTC's providing LMDS services primarily outside of its wireline telephone service area. Accordingly in providing LMDS, RTC will primarily be the new entrant competing against the incumbent local exchange and video service providers in those areas. Obviously, RTC's extensive experience in the provision of telecommunications services will make it a substantial competitor to such incumbents. Yet RTC, and other similarly situated companies, will not be able to offer competition to incumbent service

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[3] Roseville is in the Sacramento BTA and serves only a relatively small, eighty-three (83) square mile territory in a rather large BTA. The Sacramento BTA encompasses 15,860 square miles of territory.

providers if the Commission prohibits or significantly limits LEC eligibility.[4]

Thus, many LECs will use LMDS to compete against incumbent service providers outside of their wireline telephone service area. But even inside of their wireline service area, LEC provision of LMDS will promote competition. Some LECs will use LMDS to rapidly initiate video services to compete against the incumbent cable TV operator. Furthermore, competition in the local exchange market is not promoted by stifling the ability of LECs to use LMDS to provide innovative services. Rather, history shows that innovations spur other providers to further competitive innovations, all to the benefit of consumers.[5]

IV. If Limitations are to be Imposed on LEC Provision of LMDS, Such Limitations Should Not be Imposed on Small and Medium Size LECs.

The *Notice* suggests that if the Commission were to adopt restrictions on incumbent LEC provision of LMDS, it will have to define "incumbent", since wireline service areas do not coincide with BTAs. The Commission proposes that a LEC would

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4 Allowing LECs to obtain LMDS licenses for their home BTA with the condition that they disaggregate the license and sell off that portion containing their wireline service area would not be a reasonable policy, as the "disaggregated" portion alone may have little, if any, market value in conjunction with the remainder of the BTA. In such a circumstance, disaggregation may very well turn out to be impractical and the requirement to disaggregate would impose an unfair loss on LEC LMDS bidders, who will be competing against bidders with no requirement to take such a loss.

5 The *Notice* suggests that if allowed to bid on LMDS licenses in their wireline service areas, incumbent LECs may "warehouse" such spectrum or divert it to less competitive uses. RTC submits that the extraordinary costs of spectrum acquired at auctions, and the Commission's build-out requirements, make such scenarios unlikely. Furthermore, restricting use of spectrum on that basis would be contrary to the Commission's well established policy of allowing market forces to maximize efficient use of spectrum. *See, CMRS Flexible Service Offerings First Report and Order*, supra note 1, at para. 22.

be considered "in-region" if 20 percent or more of the population of a BTA is within the LEC's telephone service area. *Notice* at para. 132. RTC concurs that this is a rational definition of "in-region" for the purposes of such restrictions. As discussed above, RTC asserts that restrictions on LEC provision of LMDS are unnecessary and unwise. Nevertheless, if the Commission concludes to the contrary, then any such limitations should not be imposed on small and mid-size LECs. Such companies typically have limited ability to delay or impact competition even in their local markets, at least in comparison to large LECs such as Bell Operating Companies. Furthermore, the Commission has historically recognized the need to limit burdens on smaller LECs, for example by reducing regulatory burdens on non - "tier -1" companies. Similar relief is also contained in the provisions of recently enacted Section 251(f) of the Communications Act. Accordingly, if the Commission prohibits or otherwise restricts LEC provision of LMDS, such restrictions should not apply to non-tier-1 LECs, or to LECs that serve less than 2 percent of the nation's total access lines.

V. Conclusion

Exclusion of LECs, or limitations on LEC provision of LMDS, is not necessary to promote local exchange competition. Numerous other providers using both wireline and wireless technologies are poised to revolutionize the competitive nature of the local market. Indeed, allowing LECs to use LMDS will promote competition, as LECs use that technology to compete against incumbent cable TV operators and incumbent LECs and provide new and improved communications services within and outside their service areas. However, if the Commission decides to place some limitations on LEC provision of LMDS, such limitations should not be imposed on non-tier-1 companies, or on companies that serve less than 2 percent of the nation's access lines.

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY

By: ______________________
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August 12, 1996

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